85-1776

Supreme Court, U.S.
FILED
APR 16 1986
JOSEPH F. SPANIOL, JR.
CLERK

NO.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1985

CLARENCE H. HOLDING, PETITIONER,

V.

SOVRAN BANK , EXECUTOR OF LILLIAN J. MUSE , DECEASED , RESPONDANT.

PETITION FOR WRIT OF CERTIORARI

TO THE UNITED STATES

SUPREME COURT

Clarence H. Holding

CLARENCE H. HOLDING
1901 WOODBINE ROAD
RICHMOND , VIRGINIA
23225
(804) 232 7418

COUNSEL FOR PETITIONER

COUNSEL OF RECORD

QUESTIONS PRESENTED

1. DOES MISUSE OF RULE 5:11 OF VIRGINIA RULES OF SUPREME COURT VIOLATE DUE PROCESS OF FOURTEENTH AMENDMENT TO U.S. CONSTITUTION AND GIVE CAUSE FOR THIS COURT TO REVERSE THE VIRGINIA SUPREME COURT DECISION .

2. DOES VIOLATION OF DUE PROCESS OF FOURTEEN TH AMENDMENT TO U. S. CONSTITUTION SUFFIC IENT TO REVERSE THE DECISION OF VIRGINIA SUPREME COURT DECISION .

3. DOES VIOLATION OF A FAIR TRIAL WHERE $100,000 JUDGMENT IS ORDERED SUFFICIENT AND GROUNDS TO REVERSE THE TRIAL COURT DECISION .

4. DOES A DECISION MADE BY JURY SOLELY ON EMOTIONS, BIAS, PREJUDICE, AND UNEDUCATED JURORS SUFFICIENT TO REVERSE THE JUDGE,S DECISION TO ACCEPT AND ORDER THAT DECISION.

PARTIES TO PROCEEDINGS

CLARENCE H. HOLDING , PETITIONER IN THIS COURT
PETITIONER IN VA. S.C.
DEFENDANT IN TRIAL CT.

SOVRAN BANK , EXECUTOR , RESPONDANT IN THIS COURT
RESPONDANT IN VA. S.C.
PLANTIFF IN TRIAL CT.

BEST AVAILABLE COPY

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DUE PROCESS, 14th AMENDMENT , U. S. CONSTI TUTION_ NOR SHALL ANY STATE DEPRIVE ANY PER SON OF LIFE,LIBERTY , OR PROPERTY WITHOUT DUE PROCESS OF LAW

CONSTITUTION PROVISIONS

14th AMENDMENT , DUE PROCESS , U.S. CONSTI TUTION

JURISDICTION OF THIS COURT

GROUNDS ON WHICH THE JURISDICTION OF THIS COURT IS : RULE 17.1 (b), (c) WHEN A STATE COURT OR FEDERAL COURT OF APPEALS HAS DECIDED AN IMPORTANT QUESTION OF LAW WHICH HAS NOT BEEN, BUT SHOULD BE SETTLED BY THIS COURT, OR HAS DECIDED A FEDERAL QUESTION IN A WAY IN CONFLICT WITH THE APPLICABLE DECISIONS OF THIS COURT . THESE ARE VERY IMPORTANT QUESTIONS INDEED AND SHOULD BE DECIDED BY THIS COURT .

NO.

IN THE

SUPREME COURT OF THE UNITED STATES

CLARENCE H. HOLDING , PETITIONER

V.

SOVRAN BANK , EXECUTOR OF LILLIAN J. MUSE DECEASED , RESPONDANT.

BRIEF

PETITION FOR WRIT OF CERTIORARI

TO THE SUPREME COURT OF UNITED STATES

A PRELIMINARY STATEMENT

YOUR PETITIONER , CLARENCE H. HOLDING HASBEEN AGRIEVED , DAMAGED , AND INJURED GREATLY BY ORDERS OF VIRGINIA SUPREME COURT AND THE TRIAL COURT OF POWHATAN COUNTY . MISUSE OF RULE 5:11 OF RULES OF SUPREME COURT OF VIRGINIA ,UNABLE TO GET A FAIR TRIAL, , AND DECISION OF JURY SOLEY ON EMOTIONS , BIAS , PREJUDICE , AND UNEDUCATED JURIES VIOLATED THE DUE PROCESS OF THE 14th AMENDMENT TO THE U.S. CONSTITUTION PRODUCING GRAVE INJUSTICE , INJURIES , AND DAMAGES TO PETITIONER AND SHOULD BE REVERSED .

STATEMENT OF THE CASE

LILLIAN J. MUSE MADE A DEED OF GIFT OF A FARM TO CLARENCE H. HOLDING ON MARCH 5, 1982 RETRO ACTIVE TO FEBRUARY 2, 1981 MR. HOLDING TOOK POSSESSION ON FEBRUARY 2, 1981 . THE DEED OF GIFT WAS NOTARIXED BY ALICE LYNCH AT THE CITY HALL REGISTRA OF VOTERS. MRS. MUSE THEN DELIVERED THE DEED OF GIFT TO MR. HOLDING WHO DEPOSITED IN HIS SAFE . DEED OF GIFT WAS RECORDED IN THE CLERK,S OFFICE AT POWHATAN CIRCUIT COURT.THE STATUTE OF LIMITATIONS HAD RUN ON THE DEED OF GIFT BEFORE MRS. MUSE DIED AND IN HER LIFE TIME. SEVERAL YEARS AFTER THE DEED OF GIFT SOME 5 YEARS SOVRAN , EXECUTOR BROUGHT ACTION TO RECOVER THE PROPERTY . AN EMOTIONAL , BIAS, CONFUSED UNEDUCATED JURYN FOUND THERE WAS A TRUE DEED RECIRDED BUT DECIDED NO GIFT . JUDGE WARREN CONDONED WITH HIS DISCRETION ARY POWER THE JURY FINDING KNOWING IT TO BE FALSE AND ASSESSED THE DEFENDANT $100,000.

REASONS FOR GRANTING THE PETITION

THERE ARE MANY REASONS TO ATTAIN THE ENDS OF JUSTICE AND RIGHT . THERE WAS A MISUSE OF RULE 5:11 OF VIRGINIA RULES OF SUPREME COURT . IN

DOING SO VIOLATED THE DUE PROCESS CLAUSE OF TH 14th AMENDMENT TO THE U.S. CONSTITUTION . THE PETITIONER DID NOT GET A FAIR TRIAL IN THE TRIAL COURT BECAUSE THE JURY DECISION WAS MADE BY A PARTIAL , EMOTIONAL , BIAS UN EDUCATED , PREJUDICE JURY AND CONDONED BY THE JUDGE SUING HIS DISCRETIONARY POWER TO ACCEPT IT .

ARGUMENTS AND CONCLUSIONS

HERE YOU HAVE A DOCUMENTED VERIFIED RECORDED DEED OF GIFT OF A FARM DURING THE LIFETIME OF LILLIAN J. MUSE TO CLARENCE H. HOLDING. THE STATUTE OF LIMITATIONS HAD RUN ON THE DEED OF GIFT OF THE FARM DURING LILLIAN J. MUSE LIFE TIME . SEVERAL YEARS BEFORE HER DEATH . 5 YEARS BEFORE SOVRAN BROUGHT ACTION TO RECOVER THE FARM . DID SOVRAN BANK BRING ACTION TO RECOVER A GIFT OF $250,000.00 TO ROANOKE COLLEGE IN JUNE 7, 1981 . THE ANSWER IS NO. Only Mr. Holding WHO WAS RESPONSIBLE FOR MRS. MUSE BECOMING WEALTHY AND A MILLIONAIRE. HIS KNOWLEDGE AND WISDOM MADE IT SO .

CONFRONTED BY A PARTIAL , BIAS , EMOTIONAL PREJUDICE JURY RULED BY THE SAME RATHER THAN FACTS AND TRUTH RENDERED A FALSE DECISION

NOT A GIFT BUT A SALE . THE JUDGE COMPOUNDED THE SAME BY HIS DISCRETIONARY POWER TO ACCEPT A BIAS , EMOTIONAL , PREJUDICE JURY DECISION AND FURTHER A JUDGMENT OF $100,000.00 AGAINST MR. HOLDING . A FAIR TRIAL WAS IMPOSSIBLE IN POWHATAN CIRCUIT COURT . THE LASP OF TIME AND MEMORY LEAD TO FALSE MISLEAding testimony.EN COURAGED BY SOVRAN BANK , DONALD E KOONCE, SCOTT S CAIRNS , ATTY AND A SELFISH CONNIVING SISTER BERTHA GALE PRESENTED A FALSE CONFUSED TESTIMONY OF THE DEED OF GIFT AND REACTED BY AN EMOTIONAL , BIAS , PREJUDICE JURY . IN ADD ITION YOUR PETITIONER HAD INCOMPETENT LEGAL COUNSEL WHO COLLABORATED WITH THE SOVRAN BANK . FALSE PRESENTATION OF A NONEXIST DEED OF SALE WHICH WAS DESTROYED BY MRS. MUSE WHEN THE DEED OF GIFT OF THE FARM ON MARCH 5, 1982 . ALL PREVENTED MR, HOLDING FROM GETTING A FAIR TRIAL. AND A VIOLATION OF DUE PROCESS , 14th AMENDMENT TO U.S. CONSTITUTION.

THERE WAS A MISUSE OF RULE 5:11 OF THE VA. SUPREME COURT RULES WHICH VIOLATED DUE PROCESS RIGHTS UNDERM THE 14th AMENDMENT OD U.S. CONSTIT TUTION . YOUR PETITIONER HAD A RIGHT TO CHOOSE

BY RULE 5:11 SEC c TO PRESENT A STATEMENT RATHER THAN A TRANSCRIPT WHICH SAYS A WRITTEN STATEMENT OF FACTS , TESTIMONY , AND OTHER INCIDENTS OF THE CASE WHICH MAY INCLUDE A PORTION OF THE TRANSCRIPT . THE TRANSCRIPT WAS NOT MADE UP AS OF THIS MOMENT NOR WAS IT MADE A PART OF THE RECORD BY THE JUDGE AT THE TIME OF FINAL ORDER . JUDGE WARREN AT THE URGING OF SCOTT S CAIRNS PREVAILED UPON JUDGE WARREN ISSUING AN ORDER AFTER THE RETENTION OF THE RECORD OF 90 DAYS EXPIRED TO ORDER A TRANSCRIPT . PETITIONER OBJECTED TO THE TRANSCRIPT WHICH GIVES THE PETITIONER RIGHT TO DO SO BECAUSE THE TIME OF RETENTION OF THE RECORD HAD EXPIRED . PETITIONER OJECTIONS WERE IN ORDER BY THE RULES . THE VIRGINIA SUPREME COURT WRONGLY HELD PET ITION DISMISSED FAILURE TO COMPLY WITH RULE 5:11 . THE SUPREME COURT OF VIRGINIA MISUSED RULE 5:11 IN THEIR DECISON THEREFORE VIOLATED THE DUE PROCESS RIGHTS OF 14th AMENDMENT OF THE U.S. CONSTITUTION . THEREFORE LEAVES THE PETITIONER NO WAY OF REDRESS NOR TO CORRECT THE INJUSTICE IN TH# TRIAL COURT JUDGMENT OF $100,000.00 AND YOUR PETITIONER IS DAMAGED AND INJURED BY IT .

WHEREFORE YOUR PETITIONER ASK THAT THE WRIT OF BERTIORARI BE GRANTED REVERSAL OF SUPREME COURT OF VIRGINIA AND TRIAL COURT AND DAMAGES .

RESPECTFULLY SUBMITTED ,

Clarence H. Holding

CLARENCE H. HOLDING ,

COUNSEL FOR PETITIONER.

CERTIFICATE

I CERTIFY I SENT POSTAGE PAID FIRST CLASS 3 COPIES OF THE PETITION FOR WRIT OF CERT IORARI TO COUNSEL FOR RESPONDANT SCOTT S. CAIRNS,ONE JAMES CENTER 901 EAST CARY ST. RICHMOND , VA. 23219 ; APRIL 16, 1986.

Clarence H. Holding

CLARENCE H. HOLDING

COUNSEL FOR PETITIONER

V I R G I N I A

IN THE CIRCUIT COURT OF POWHATAN COUNTY

SOVRAN BANK EXEC. , PLANTIFF,

V. CASE # C 471 - 84

CLARENCE H. HOLDING , DEFENDANT

DECREE

ON MAY 17,18,1985 CAME THE PARTIES AND PRES SENTED EVIDENCE ORE TENUS, BY DEPOSITIONS , EXIBITS, AND ARGUMENTS OF COUNSEL BASED ON EVIDENCE HEARD, AND FINDINGS OF FACT MADE BY JURY ON CERTAIN ISSUES OUT OF CHANCERY, COURT MAKES FINDINGS OF FACT AND CONCLUSION OF LAW:

1. THE DEED DATED FEBRUARY 2, 1981, and TRANS FERRING TITLE TO PROPERTY KNOWN AS BLUEBELL FARM TO DEFENDANT HOLDING EXIBIT C , IS NOT A DEED OF GIFT BUT IS DEED OF BARGAIN SALE .

2. BY DEFENDANT HOLDING OWN ADMISSION AND TESTIMONY MADE NO PAYMENTS UNDER THIS DEED.

3. IT WAS ESTABLISHED BY EXIDENCE THE PRICE IS $100,000 .

4. DEFENDANT HOLDING IS INDEBTED TO PLANTIFF $100,000.

WHEREFORE, BASED ON FINDING OF FACTS ANDN CONCLUSION OF LAW , IT IS HEREBY ADJUDGED ORDER ED AND DECREED TITLE TO BLUEBELL FARM IS

IN HOLDING AND JUDGMENT AGAINST HOLDING IS ENTERED THIS DAY FOR PLANTIFF FOR $100,000. PLUS INTEREST FROM TODAY 12 % PER ANNUN . PAYMENT AT MCQUIRE WOODS BATTLE ON OR BEFORE 10/9/85 : AND PLANTIFF SHALL NOT EXECUTE ITS JUDGMENT IN THAT PERIOD.

PLANTIFF OBJECTED ENTER JUNE 11, 1985

DEFENDANT OBJECTED THOMAS V. WARREN , JUDGE.

decree. based on false non existence deed presented by Plantiff.

EXIBIT 1

V I R G I N I A

IN THE CIRCUIT COURT OF POWHATAN COUNTY

CLARENCE H. HOLDING , APPELLANT

V. CN C.471 84

SOVRAN BANK , EXECUTOR ESTATE LILLIAN J. MUSE
DECEASED APPELLEE

ANOTICE OF APPEAL

PURSUANT O RULE 5:6 AND ALL AMENDMENTS THERE TO OF THE SUPREME COURT OF VIRGINIA , I CLARENCE H. HOLDING DOTH FORTHWITH GIVE NOTICE OF APPEAL TO ORDER AND RULINGS DATED JUNE 11, 1985 IN POWHATAN COUNTY CIRCUIT COURT. A STATEMENT OF FACTS , TESTIMONY OR INCIDENTS OF THE CASE WILL BE FILED .

I REQUEST THE CLERK FORWARD THE RECORD . A CHECK FOR $20.00 IS HEREBY ATTACHED CLERK FEES.

THIS DAY JULY 9,1985 RESPECTFULLY SUBMITTED,
HAND DELIVERED

CLARENCE H. HOLDING, Counsel

CERTIFICATE

I CERTIFY A COPY OF NOTICE OF APPEAL WAS SENT POSTAGE PAID OTO COUNSEL FOR APPELLEE 7/9/85.

CLARENCE H. HOLDING, COUNSEL

REC,D AND FILED 7/9/85
WM E MAXEY , JR CLK TESTE

EXIBIT P 9

CIRCUIT COURT OF POWHATAN COUNTY
CLERK OF COURT
P.O. BOX 37
POWHATAN , VIRGINIA 23139

DEAR MR. MAXEY :

JULY 9 , 1985 I REQUESTED YOU SEND THE RECORD IN YOI

YOUR PSOOESSION TO THE SUPREME COURT OF VIRGINIA

IN RICHMOND. YOU HAVE NOT DONE SO . PURSUANT

TO RULES OF THE SUPREME COURT RULES 5:9 , RULE

5:13, RULE 10 I HEREBY REQUEST YOU FORWARD THE

RECORD TO THE SUPREME AOURT IMMEDIATELY.

CASE REFERENCE :
CLARENCE H. HOLDING
V
SOVRAN BANK , EXEC
CASE # C 471-84

VERY TRULY YOURS ,

CLARENCE H. HOLDING , COUNSEL

EXIBIT 3 P 3

V I R G I N IOA

IN THE POWHATAN COUNTY CIRCUIT COURT Z

CLARENCE H. HOLDING , APPELLANT

V. CASE # C 471-84

SOVRAN BANK , EXEC . OF ESATE OF LILLIAN J. MUSE , DECEASED . APPELLEE.

TO THE HONORABLE JUDGE WARREN :

OBJECTIONS TO TRANSCRIPT

YOUR APPELLANT , CLARENCE H. HOLDNNG , ON THE GROUNDS OF RULE 5:9 SEC. (a) OF THE RULES OF SUPREME COURT OF VIRGINIA DOTH HEREBY FORTH WITH OBJECT TO THE TRANSCRIPT BE ENTERED IN THE RECORDS . THE TRNSCRIPT HAS NOT BEEN PREPARED AS OF AUGUST 22, 1985 THUS IS BARRED.

RESPECTRULLY SUBMITTED.,
Clarence H. Holding
CLARENCE H. HOLDING , COUNSEL .

CERTIIICATE

I CERTIFW I SET A POSTAGE PAID COPY OD OBJECT IONS TO THE TRANSCRIPT TO COUNSEL OF APPELLEE. 8/22/85 .

Clarence H. Holding
CLARENCE H. HOLDING , COUNSEL

EXIBIT 4 P 4

V I R G I N I A

IN THE SUPREME COURT

CLARENCE H. HOLDING APPELLANT

V. CASE NO . LC C 471 84

SOVRAN BANK , EXEC OF ESTATE OF LILLIAN J. MUSE , DECEASED APPELLEE

PETITION FOR APPEAL AND ASSIGNMENT ERRORS

ENCLOSED CHECK FOR $25.00 CLERK FEE .

PURSUANT TO RULES 5.21;5;22;5:24 ; 5:25;5:26 OF THE SUPREME COURT OF VIRGINIA, YOUR APPELLANT CLARENCE H. HOLDING BY COUNSEL PRESENTS HIS PETITION APPEAL AND ASSIGNMENT OF ERRORS . FOR GOOD CAUSE AND TO ENABLE THE JUSTICES TO ATTAIN THE ENDS OF JUSTICE ASSIGNMENT OF ERRORS ARE HEREBY MADE TO FINAL ORDER OF JUDGE THOMAS V. WARREN JUDGE OF CIRCUIT COURT OF POWHATAN COUNTYDATED JUNE 11, 1985. YOUR APPELLANT ASK FOR REVERSL OF ORDER BY JUDGE WARREN JUDGMENT OF $100,000. TO SOVRAN BANK AND REVERSAL OF ORDER OF SALE OF FARM WHICH WAS NOT IN EXISTENCE AND RATHER WHAT IT TRULY IS BY GIFT BY MRS. MUSE ON MARCH 5, 1982 RETOACTIVE TO FEBRUARY 2, 1981 . ALL WERE OBJECTED TO AT TRIAL TO NO AVAIL . MOTIONS TO STRIKE , MOTIONS OF PLEA FOR STATURE OF LIMITATIONS, PLEA OF DEMURRER , PLEA OF LIMINE,

PLEA OF CDLLATERAL ESTOPPEL WERE PRESENTED AND ARGUED TO NO AVAIL . ALL WERE DENIEDAND AFTER ALL WERE OBJECTED TO AND EXCEPTED TO ; APPELLANT WAS DENIED A FAIR TRIAL AND HIS CON STITUTIONAL RIGHTS OF DUE PROCESS GUARANTEED BY FOURTEENTH AMENDMENT TO THE U.C. CONSTITUTION AND VIRGINIA CONSTITUTION .

APPELLANT HAD INCOMPETENT COUNSEL WHO COLLABO RATED WITH SOVRAN BANK AND SCOTT S CAIRNS .

ERRORS ARE SET FORTH AND PRESENTED :

1. JUDGE ERRORED BY FAILUEE TO SET ASIDE THE JURY DECISION AS THE DECISION WAS MADE BY UNED UCATED PEOPLE ON EMOTIONS AND PREJDDICE RATHER THAN BY FACTS AND EVIDENCE@ RATIONAL REASONING WAS VOID .

2. JUDGE ERRORED BY AWARD OF $100,00 JUDGMENT AGAINST DEFENDANT HOLDING A NON EXISTENT SALE RATHER THAN WHAT IT WAS A TRUE GIFT .

3.JUDGE ERRORED BY DENYING THE STATUTE OF LIMI TATIONS WHICH HAD RUN DURING MRS, MUSE LIFETIME AFTER SHE GIVE THE GIFT SOME FIVE YEARS .

4. JUDGE ERRORED BY NOT SUSTAINING THE DEFENDANT DEMURRER WHICH WOULD HAVE SAVED SO MUCH MONEY AND VALUABLE TIME . DEFENDANT SHOULD HAVE BEEN AWARDED DAMAGES AND PUNITIVE DAMAGES .

5JUDGE ERRORED BY DENYING DEFENDANTS COLLATERAL ESTOPPEL. AND MOTION IN LIMINE .

6. JUDGE ERRORED BY NOT GIVING AND ALLOWING A FAIR TRIAL .

7. JUDGE ERRORED WHEN HE VIOLATED THE APPELLANT CONSTITUTIONAL RIGHTS OF DUE PROCESS GUARANTEED BY THE FOURTEENTH AMENDMENT OF U. S. CONSTITUTION

JURY DECISIONS AND ACTIONS AT THE POWHATAN COUNTY CIRCUIT COUT HAVE BEEN , STILL ARE , VERY EMOTIONAL IRRATIONAL , BIAS , UNCERTAIN , UNDEPENDABLE, UN FAIR AND MADE BY MOSTLY UNEDUCATED UNINTELLIGENT PEOPLEI IN THE PAST AND IN THE PRESENT WHICH HAS CAUSED GREAT SUFFERING AND INJURIES AND RUBBER STAMPED BY THE JUDGE AT HIS DISCRETION . I RELATE A CASE IN POINT IN 1983 COMMONWEALTH V WAYNE Mc HENRY. CULPRIT STOLE SOME CHAIN LINK FENCE AND POST / FROM MY PROBERTY . GRAND JURY FAILED TO FIND A TRUE BILL . UPON REPRENTING TO THE GRAND JURY A TRUE BILL WAS FOUND . YOU COULD LOOK OUT WINDOW OF COURT HOUSE AND SEE THE WIRE AND POST AND MCHENRY HAD A KEY TO THE HOUSE ON FARM . JUDGE WARREN ENTERED A NOT GUILTY VERDICT . COMMONWEALTH ATTORNEY WHO PRESENTED THE TRUTHM After TRIAL PREVAILED ON McHENRY AND HIS ATTORNEY TO RETURN THE PROPERTY HE HAD STOLEN FROM MR. HOLDING . JUDGE WARREN IN COURT SAID BRAZENLY AND ARROGENTLY I HAVE LET A A GUILTY MAN GO FREE . EXIBIT 5 P 7

AS YOU SEE EMOTIONS GOVERN IN MOST JURY TRIALS IN POWHATAN PLUS UNEDUCATED PEOPLE . FURTHER JUDGE WARREN DECISIONS ARE CORRUPT AND UNFAIR. MANY CAN AND DO SUFFER AS A RESULT OF HIS BIAS DICTORIAL , UNFAIR , EMOTIONAL DECISIONS . THE STATUTE OF LIMITATIONS ON THE GIFT OF THE FARM HAD EXPIRED MANY YEARS BEFORE MRS. MUSE DIED. THE GIFT WAS MADE SHORTLY AFTERTFEBRUARY 2, 1981 AND CONSUMATED MARCH 5, 1982 BY MRS. MUSE WHO SIGNED THE DEED OF GIFT TO MR. HOLDING RETROACTIVE TO FEBRUARY 2, 1981 MRS. MUSE SIGNED THE DEED OF GIFT OF THE FARM ON MARCH 5, 1982 , NOTARIZED BY ALICE LYNCH AT THE CITY HALL AND DELIVERED THE DEED OF GIFT ON THAT DAY /TO MR. HOLDING AND MR . HOLDING TOOK IT HOME AND PUT IN LOCK BOX . MRS. MUSE OWNED THE FARM AND HAD A LEGAL RIGHT TO GIVE THE PARM TO MR. HOLDING . MRS. MUSE GAVE ROANOKE COLLEGE A GIFT OF $250,000.00 ON JUNE 6, 1981 . MRS. MUSE ACTS DURING HER LIFETIME ARE IRREVOCABLE AND SHE HAD A PERFECT RIGHT TO DO SO . MRS. MUSE WAS WEALTHY AND GAVE ABUNDANTLY OF WHAT SHE HAD . PROBABLY IS REA SON SHE WAS WEALTHY - SHE SHARED HER WEALTH . THE CONSTITUTION AND LAWS OF THE STATE AND U. S. PROTECT HER RIGHTS TO GIVE OF HER PROPERTY TO OTHERS OF HER CHOSING NOT TO BE CHANGED OR INTERUPTED OR STOLEN

BY A CONNIVING SISTER , BANK , AND ATTORNEY .

REASONS JUDGE WARREN ERRORED BY REFUSING THE DEMURRER TO SET ASIDE THE CASE , MOTION IN LIMINE , MOTION ON COLLATERAL ESTOPPEL ARE INHERENT IN HIS ACTIONS, RULINGS , ORDERSS, PROCEEDINGS , JUDGMENT.

REASONS JUDGE WARREN ERRORED BY NOT GIVING A FAIR TRIAL AND VIOLATED THE CONSTITUTIONAL RIGHTS OF APPELLANT DUE PROCESS GUARANTEED BY FOURTEENTH AMENDMENT TO U S. CONSTITUTION AND VIRGINIA CONST.

AJUDGMENT OF $100,000 AGAINST THE APPELLANT BASED ON A FALSE DEED WHICH DID NOT EXIST IS APPALLING WHEN THE DEED IS AND WAS NOT IN EXISTENCE . DUE PROCESS WAS VIOLATED WHEN ALL EVIDENCE, FACTS, TESTIMONY , EXIBITS SHOWED THE DEED OF GIFT WAS THE ONLY DEED IN EXISTENCE AND WAS RECORDED AT THE COUR HOUSE .

ASK THE HONORABLE JUSTICES OF COURT TO FIND IN THEIR HEART TO DO WHAT IS HONEST AND RIGHT, WHAT IS JUST , WHAT IS HONORABLE, WHAT IS TRUE JUSTICE AND AWARD THE DEFENDANT A REVERSAL SET ASIDE THE JUDGMENT OF $100,000 .

RESPECTFULLY SUBMITTED ,

CLARENCE H. HOLDING , COUNSEL

CERTIFICATE

I CERTIFY I SENT POSTAGE PAID A COPY OF APPEAL AND ASSIGNMENT OF ERRORS q 9/9/85.

EXIBIT 5 P9

CLARENCE H. HOLDING , COUNSEL

V I R G I N I A

IN THE SUPREME COURT HELD AT THE CITY OF RICHMOND AT ON TUESDAY DECEMBER 31 , 1985 .

CLARENCE H. HDLDING APPELLANT

V RECORD NO 850714; CIRCUIT CT. NO. C 471-84

SOVRAN BANK , EXECUTOR , INC APPELLEE

FROM POWHATAN COUNTY CIRCUIT COURT

ON 9/10/1985 CAME APPELLANT , IN PROPER PER SON, AND FILED PETITION FOR APPEAL .

THEREUPON CAME THE APPELLEE, BY COUNSEL, AND FILED A MOTION TO DISMISS AND A BRIEF IN OPPOS ITION. APPELLANT SILED A MOTION TO SET ASIDE, AND A REPLY BRIEF, A MOTION TO STRIKE AND A TO, LETTER .

ON CONSIDERATION WHEREOF , THE MOTION TO DIS MISS IS GRANTED FOR FAILURE TO COMPLY WITH RULE 5:11 AND THE PETITION IS REFUSED .

A COPY

TESTE: DAVID B BEACH , CLK

EXIBIT 6 P 10

V I R G I N I A

IN THE SUPREME COURT IN RICHMOND FRIDAY 17, JANUARY , 1986.

CLARENCE H. HOLDING APPELLANT,

AGAINST RECORD NO. 850714 CIRCUIT CT C471-84

UPON PETITION FOR REHEARING

On consideration PETITION O APPELLANT TO SET ASIDE JUDGMENT RENDERED ON DECEMBER 31 ,1985, AND GRANT A REHEARING, THE PRAYER OF SAID PET ITION IS DENIED .

CHIEF JUSTICE CARRICO AND JUSTICE STEPHENSON TOOK NO PART IN THE CONSIDERATION OR DECISION OF THIS CASE .

A COPY ,

TESTE: DAVID B BEACH , CLK

EXIBIT 7 P. 11

V I R G I N I A

IN THE SUPREME COURT

CLARENCE H. HOLDING , APPELLANT

V. L C. NO. S.C. NO 850714
C 471 84

SOVRAN BANK , EXEC of LILLIAN J. MUSE ,DECEASED
APPELLEE.

TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATES

I, CLARENCE H. HOLDING , APPELLANT BY COUNSEL COMES IN RESPONSE TO YOUR REQUEST .

PURSUANT TO RULE 5:13 SEC. c OF THE RULES OF THE SUPREME COURT VIRGINIA MANDATES THE CLERK OF TRIAL COURT TO DELIVER THE RECORDS TO THE SUPREME COURT WITHIN NO LATER THAN 90 DAYS FROM FINAL JUDGMENT. THE CLERK OF CIRCUIT COURT DEL IBERTLY AND INTENTIONALLY DID NOT DO SO .

THE CLERK OF SUPREME COURT INFORMS ME THE RECORD WAS FILED ON NOVEMBER 6, 1985 .

PURSUANT TO THE CODE SEC 8.01-679 STATES THE FAILURE OF THE TRIAL COURT CLERK TO DELIVER THE REC RECORD TO SUPREME COURT, NOTWITHSTANDING ANY PROVISIONS OF LAW TO THE CONTRARY , NO APPEAL SHALL BE REFUSED OR DISMISSED FOR FAILURE TO DELIVER THE RECORD WITHIN THE REQUIRED TIME IF IT SHALL APPEAR FROM EVIDENCE SATISFACTORY TO THE SUPREME COURT THE RECORD ON APPEAL THAT

THE CLERK OF COURT BELOW FAILED TO DELIVER THE RECORD ON APPEAL WITHIN THE REQUIRED TIME AFTER HAVING BEEN NOTIFIED TO DO SO IN ACCORD ANCE WITH THE PROVISIONS OF RULES OF SUPREME COURT. THE CLERK OF THE TRIAL COURT, WILLIAM E. MAXEY , JR. OF CIRCUIT COURT OF POWHATAN COUNTY WAS GIVEN 2 WRITTEN NOTICES AND SEVERAL ORAL REQUESTS TO DELIVER THE RECORD OF CASE TO SUPREME COURT . ATTACHED.

PURSUANT TO RULE 5:13 SEC c of SUPREME COURT RULES OF VIRGINIA STIPULATES THE CLERK OF TRIAL COURT SH

ALL THEN FORTHWITH TRANSMIT THE RECORD TO THIS COURT; PROVIDED, HOWEVERM THAT NOTWITHSTANDING THAT THE FOREGOING PERIODS OF RETENTION MAY NOT HAVE EXPIRED THE CLERK OF THE TRIAL COURT SHALL TRANSMIT THE RECORDS SOONER IF REQUESTED IN WRIT INGE BU COUNSEL OF ALL PAETIES TO APPEAL AND SHALL WHETHER OR NOT IS REQUESTED TRANSMIT THE RECORD IN TIME FOR DELIVERY TO CLERK OF THIS COURT WITHIN THREE (3) MONTHS AFTER ENTRY OF JUDGMENT APPEALED FROM . THE FAILURE OF THE CLERK OF TRIAL COURT TO TRANSMIT THE RECORD AS HEREIN PROVIDED SHALL NOT BE A GROUND FOR DISMISSAL OF APPEAL FROM THIS COURT . "THIS IS ABSOLUTE MANDATE TO THE CLERK OF TRIAL COURT TO CLERK OF TRIAL COURT .

MR. MAXEY FAILED TO DELIVER THE RECORD BY HIS CONDUCT WHICH WAS INTENTIONAL AND DELIBERATE ON HIS PART . MR. MAXEY DELIBERATELY FAILED TO SEND ME A COPY OF THE FINAL ORDER OF JUNE 11, 1985. MR. MAXEY DELIBERATELY DID NOT DELIVER A LETTER WHICH WAS HAND DELIVERED TO HIM FOR ME ADDRESSED TO ME FOR TRISL ON JUNE 11, 1985 . HE CHOSE TO

TO WITHHOLD THE LETTER UNTIL AFTER TRIAL KNOWING THE LETTER WAS IMPORTANT TO THE TRIAL WHICH PREJDICE MY CASE . THE MAXEY AFTER RECORDING MY DEED ON AUGUST 17 , 1983 DELIBERTTELY PUT FALSE NOTATIONS ON THE BOTTOM OF THED DEED .

MR. MAXEY DEPUTY , KATHERINE C. POWERS ON JULY 9, 1985 DELIBERATELY TRIED TO PREVENT ME FROM FILING MY APPEAL CREATING A SCENE IN THE PRESENCE OF SEVERAL OTHER PEOPLE IN THE CLERK OFFICE CAUSING GREAT EMBARRASMENT .

WHEREFORE , HEREWITH ON THE GROUNDS OF RULE 13 SEC c OF THE VIRGINIA SUPREME COURT RULES AND UNDER PROVISIONS OF VIRGINIA CODE SEC 8.01-679, AND REASONS SET FORTH , AND WILFUL , DELIBERATE , INTENTIAL REFUSAL OF CLERK TO DELIVER THE RECORD TO THIS COURT AS EQUIRED UNTIL NOVEMBER 6 , 1985 , certainly IT WAS O FAULT OF THE APPELLANT AND SHOULD BE EXCUSED NDER THE PROVISIONS OF VA. CODE SEC 8.01-679 AND ULES OF TH APPLICABLE SUPREME COURT OF VIRGINIA ULES .

RESPECTFULLY SUBMITTED ,

1/12/1985 .

CLARENCE H. HOLDING , COUNSEL

EXIBIT 8 P 14

V IRGI N IA

IN THE SUPREME COURT

CLARENCE H. HOLDING , APPELLANT ,

V. RECORD 850714; CIRCUIT CT C471 84

SOVRAN BANK , EXECUTOR ESTATE OF LILLIAN J. MUSE , DECEASED, APPELLEE.

NOTICE OF APPEAL

CLARENCE H. HOLDING , APPELLANT DOTH HEREBY FORTHWITH GIVE NOTICE OF APPEAL FROM ORDERS DATED DECEMBER 31 , 1985 and JANUARY 17 , 1986.

To THE SUPREME COURT OF UNITED STATES IN WASH INGTON , D. C.

I HEREBY REQUEST FORTHWITH THE CLERK OF SUP REME COURT OF VIRGINIA TO SEND FORTHWITH THE RECORDS OF THE CASE IN HIS POSSESSION TO THE SUPREME COURT OF THE UNITED STATES IN WASH INGTON , D. C. Without Belay.

RESPECTFULLY SUBMITTED ,

CLARENCE H. HOLDING , COUNSEL

CERTIFICATE

I CERTIFY A COPY OF APPEAL WAS SENT POSTAGE PAID TO COUNSEL FOR APPELLEE 1/25,1986.

CLARENCE H. HOLDING , COUNSEL

EXIBIT 9 P 15

Supreme Court, U.S.
FILED
MAY 30 1986
JOSEPH F. SPANIOL, JR.
CLERK

NO. 85-1776

IN THE

Supreme Court of the United States

October Term, 1985

CLARENCE H. HOLDING

Petitioner,

v.

SOVRAN BANK, EXECUTOR AND TRUSTEE UNDER THE WILL OF LILLIAN J. MUSE

Respondent.

Brief in Opposition to Petition for Writ of Certiorari to the Supreme Court of Virginia

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Questions Presented for Review

Should this Court review the Supreme Court of Virginia's denial of Petitioner's petition for appeal where Petitioner failed to comply with the Virginia Rule of Court requiring appellant to make a transcript or written statement of the proceedings below part of the record on appeal,

and

Where the decision of the Supreme Court of Virginia was based solely on state grounds and no federal question was presented?

Parties to the Proceeding

Petitioner in this Court and defendant/ appellant below:
.....Clarence H. Holding

Respondent in this Court and plaintiff/ appellee below:
.....Sovran Bank, N.A., as Executor and Trustee under the Will of Lillian J. Muse, Deceased[1]

Other defendants in the lower court, not parties to Petitioner's petition for appeal in the Supreme Court of Virginia or to this action:
.....Thomas R. Gale
Bertha J. Gale
The Trustees of Roanoke College
The Virginia Museum of Fine Arts

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[1] Sovran Bank, N.A., is a wholly-owned subsidiary of Sovran Financial Corporation. Other than wholly-owned subsidiaries of Sovran Financial Corporation, neither Sovran Financial Corporation nor Sovran Bank, N.A. has any subsidiaries or affiliates.

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Opinion Delivered in the Court Below

The December 31, 1985 and January 17, 1986 Orders of the Supreme Court of Virginia, of which Petitioner seeks review, are retyped as Exhibit 6, page 10 and Exhibit 7, page 11 to Petitioner's brief.

The Circuit Court's opinion of July 11, 1985 is retyped as Exhibit 1 to Petitioner's brief.

Grounds on Which the Jurisdiction of this Court is Invoked

Respondent denies that this Court has jurisdiction because Petitioner's Petition for Writ of Certiorari contains no allegations sufficient to support jurisdiction under Rule 17 of the Rules of this Court, nor does the Petition make any allegation that calls into question the constitutionality of a state statute. See 28 U.S.C. 1257(3).

Statutes Involved

The Petitioner's Petition for Appeal was denied for failure to provide the Virginia Supreme Court a record of the trial court proceedings. Rule 5:11 of the Rules of the Supreme Court of Virginia, which states the procedures for completing the record, provides:

> (a) Transcript. - The transcript of any proceeding is a part of the record when it is filed in the office of the clerk of the trial court within 60 days after entry of judgment.
>
> (b) Notice. - Counsel for appellant shall promptly notify all other counsel of the date on which the transcript is filed.
>
> (c) Written Statement. - In lieu of a transcript, a written statement of facts, testimony, and other incidents of the case, which may include or consist of a portion

of the transcript, becomes a part of the record when:

(1) within 55 days after entry of judgment a copy of such statement is filed in the office of the clerk of the trial court. A copy must be mailed or delivered to opposing counsel accompanied by notice that such statement will be presented to the trial judge no earlier than 15 days nor later than 20 days after such filing; and

(2) the statement is signed by the trial judge and filed in the office of the clerk of the trial court. The judge may sign the statement forthwith upon its presentation to him if it is signed by counsel for all parties, but if objection is made to the accuracy or completeness of the statement, it shall be signed in accordance with subsection (d) of this Rule.

(d) Objections. - Any party may object to a transcript or written statement on the ground that it is erroneous or incomplete. Notice of such objection specifying the errors alleged or deficiencies asserted shall be filed with the clerk of the trial court within 15 days after the date of mailing of the notice of

filing the transcript (subsection (b) of this Rule) or within 15 days after mailing of the notice of filing the written statement (subsection (c) of this Rule) is filed in the office of the clerk of the trial court, or if the transcript of written statement is filed before the notice of appeal is filed, within 10 days after the notice of appeal has been filed with the clerk of the trial court. Counsel for the objecting party shall give the trial judge prompt notice of the filing of such objections. Within ten days after the notice of objections is filed with the clerk of the trial court, the judge shall:

(1) overrule the objection;

(2) many any corrections that he deems necessary;

(3) include any accurate additions to make the record complete;

(4) certify the manner in which the record is incomplete; and

(5) sign the transcript or written statement.

At any time while the record remains in the office of the clerk of the trial court, the trial judge may, after notice to counsel and hearing, correct the transcript or written statement.

No. 85-1776

In the
Supreme Court of the United States
October Term, 1985

CLARENCE H. HOLDING,

Petitioner,

v.

SOVRAN BANK, EXECUTOR AND TRUSTEE UNDER THE WILL OF LILLIAN J. MUSE, DECEASED,

Respondent.

Brief in Opposition to
Petition for Writ of Certiorari
To the Supreme Court of Virginia

Statement of the Case

Sovran Bank, N.A. ("Sovran"), is the executor and trustee under the will of Lillian J. Muse, who died on

August 13, 1983. Sovran filed this action on behalf of the estate on December 16, 1983 in the Circuit Court for the City of Richmond, seeking a declaratory judgment with respect to the rights, if any, of Petitioner, Clarence H. Holding ("Holding") in a parcel of real estate known as Blue Bell Farm, located in Powhatan County, Virginia. In addition, Sovran sought an accounting, damages and a declaration that a certain deed concerning Blue Bell Farm be declared null and void. Because the Richmond Circuit Court felt that the County of Powhatan was a preferable venue for this action, the Richmond Circuit Court action was

dismissed without prejudice and refiled in the Circuit Court of the County of Powhatan on August 16, 1984.

Following a two-day trial, the jury, on issues out of chancery requested by Holding, found that the deed in question was not a deed of gift as Holding claimed. The Circuit Court accepted the findings of the jury and further found that the deed was a deed of bargain and sale for which Holding had paid no consideration. The Circuit Court

entered a decree in favor of Sovran in the amount of $100,000.[2]

Mr. Holding noted his appeal and filed with the Circuit Court a "Statement of Case". Sovran filed its objections to the Statement on the grounds that it was erroneous and incomplete. Because a transcript was available for submission as a complete record of the evidence presented at trial and of various rulings of the Court, the Circuit Court directed Holding to present that transcript. Holding did not do so and the Circuit Court refused to

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[2] Exhibit 1 to the Petition for Writ of Certiori.

certify Mr. Holding's Statement, finding that the Statement was inaccurate in its description of testimony presented and incomplete in its omission of testimony of many witnesses. In addition, the Circuit Court sustained the objections made by Sovran to the Statement.

On September 9, 1985, Mr. Holding filed a Petition for Appeal with the Supreme Court of Virginia. On October 3, Sovran filed a Motion to Dismiss. On December 31, 1985, the Supreme Court of Virginia dismissed the Petition for Appeal for failure to comply with Rule 5:11 of the Rules of the Supreme Court of Virginia, as Holding failed to

present the court with either a transcript or a statement of fact certified by the trial court.

Holding sought a rehearing on his petition. On January 17, 1985, the Supreme Court denied his request.

Reasons for Denying the Petition

This is an ordinary case of a litigant failing to comply with a court's procedure. There are no issues in this action that meet the requirements of Rule 17 or of 28 U.S.C. § 1257(3). There are no special or important reasons for this Court to exercise its discretion and grant Holding's Petition.

A. The Supreme Court of Virginia Correctly Found that Holding had not Complied with its Rules in Filing his Petition for Appeal.

Plaintiff's Petition focuses primarily on the injustice he claims was done by the jury in this case in ruling against him. However, the Supreme Court of Virginia denied his Petition for Appeal, not based on the merits of his claim, but based on his failure to comply with Rule 5:11 of the Rules of the Supreme Court of Virginia. By failing to provide the Court with either a transcript of the trial or a statement of facts certified by the trial court, Holding made it impossible for the Court to review the record to determine if an injustice was done, because no record was presented to the Court. The

appellant has the primary responsibility of presenting evidence to the Supreme Court of Virginia in order to allow that Court to give full consideration to the assignment of error. Rule 5:11 provides a simple procedure for presenting the appellate court with an adequate record to review the decisions of the trial court. Holding failed to comply with those simple procedures.

In Green v. Elbert, 137 U.S. 615, 621 (1891), this Court stated:

> To the proper conduct of business of this court, rules are necessary, and, having been prescribed, reasonable compliance with them is expected and must be insisted upon. When they are disregarded, dispensation from the circumstances can be only extended when the circumstances furnish adequate excuse, were

> this otherwise, our regulations might become more honored in the breach than the observance, and the recognition of due procedure would be seriously weakened and impaired.

Just as this Court has rules that must be followed, so does the Supreme Court of Virginia. That court properly dismissed Mr. Holding's petition for appeal for failure to comply with those rules.

B. No Federal Question Arises From This Case Because the State Court Proceedings Complied with Constitutional Standards.

Although Holding claims a violation of his constitutional rights, his Petition fails to explain how the Supreme Court of Virginia abridged those rights other than by claiming that they "misused Rule

5:11." The right to have a decision reviewed is not an absolute right in Virginia, but is subject to such conditions as the legislature may put upon it. Town of Falls Church v. County Bd., 166 Va. 192, 184 S.E.2d 459 (1936). Holding did not comply with those restrictions.

Moreover, under both federal and state law:

> The right of appeal is no part of due process of law. All that a litigant can ask is that in some appropriate way, before some duly constituted tribunal, its compensation shall be determined. Backus v. Port Street Union Depot Co., 169 U.S. 557 (1898). . . .

Rudacille v. State Commission, 155 Va. 808, 817, 156 S.E. 829 (1931). Mr. Holding had the opportunity to present his claims in the Circuit Court. As

Mr. Holding had no right to an appeal except in the discretion of the Supreme Court of Virginia, he can claim no constitutional deprivation in that court's decision to deny his petition.[3]

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[3] Even if Mr. Holding did have a "right" to appeal the Circuit Court's decision, a restraint on access to that appeal would be invalidated only if it were so arbitrary, unequal, and oppressive as to shock the fairness the 14th Amendment was intended to satisfy. See Chicago & N. R. Co. v. Nye Schneider Fowler Co., 260 U.S. 35 (1922). Clearly, the requirement that an appellant provide a record of the proceedings below does not meet this heavy burden.

Conclusion

There is no reason for this Court to review the Supreme Court of Virginia's refusal to grant Mr. Holding's petition for appeal. The decision of the Virginia Supreme Court is founded solely on state grounds, and the decision does not deny Mr. Holding any constitutional rights. Therefore, the Petition for Writ of Certiorari to review the decision of the Virginia Supreme Court should be denied.

Respectfully submitted,

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the Will of Lillian J.
Muse, Deceased

CERTIFICATE OF SERVICE

I hereby certify that three true and exact copies of the foregoing Brief in Opposition to Petition for Writ of Certiorari to the Supreme Court of Virginia were mailed, postage prepaid, this 30th day of May, 1986, to Clarence H. Holding, 1901 Woodbine Road, Richmond, Virginia 23225.